

Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For the Period
From January 1, 1966
Through March 31, 1966

VOLUME 122

RICHMOND M. FLOWERS, Attorney General



QUARTERLY REPORT
of the
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**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS
OF ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1966 through March 31, 1966, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

RICHMOND M. FLOWERS
Attorney General

RICHMOND M. FLOWERS

Attorney General

HARVEY ELROD

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	Willard W. Livingston
	Herbert Burson
Finance:	William H. Burton, Jr.
James T. Hardin	B. Frank Loeb
	James R. Payne
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OPINIONS

January 7, 1966

Honorable Tom W. Turner
Judge of Probate
Washington County
Chatom, Alabama

Mineral Documentary Tax — Wills

Mineral documentary tax not due upon the probate of a will.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion dated December 14, 1965, is as follows:

"I refer you to Title 51, Section 16(11) of the 1963 Supplement to the Code of Alabama as Recompiled in 1958. I would like your opinion on the following matters with respect to this Code section:

"1. Where the original purchaser of minerals has paid the documentary tax and thereafter dies intestate, are his heirs again required to pay the documentary tax?

"2. Where the original purchaser of minerals has paid the documentary tax and thereafter dies testate, are his heirs again required to pay the documentary tax?"

In our telephone conversation on December 22, 1965, you stated that with respect to Question No. 1, no instrument or other writing evidencing a transfer to the heirs has been or will be filed and recorded, and with respect to Question No. 2, no instrument or other writing evidencing a transfer to the heirs has been or will be filed and recorded other than the usual record made in the probate of a will.

Title 51, Section 16(11), Pocket Part, Code of Alabama 1940, Recompiled 1958, provides as follows:

"§ 16(11). Mineral documentary tax levied—There is hereby levied and shall be paid and collected as herein set forth a documentary or transfer tax (to be known as the mineral documentary tax) upon the filing and recording of every lease and other writing hereafter executed whereby there is created a leasehold interest in and to any nonproducing oil, gas or other minerals in, on or under or that may be produced from any lands situated within the state of Alabama, or whereby any such interest is assigned or is extended beyond the primary term fixed by the original instrument, and upon every deed, instrument, transfer, evidence of sale or other writing whereby there is hereafter conveyed to a grantee or purchaser, or excepted or reserved to a grantor separately and apart from the surface any interest in or right to receive royalty

from any nonproducing oil, gas or other minerals in, on or under or that may be produced from any lands within the state of Alabama. Provided the tax shall not apply to any mortgage or instrument creating a lien upon such interest, nor to the sale under foreclosure thereof."

Title 51, Section 16(13), Pocket Part, Code of Alabama 1940, Recompiled 1958, provides, in part, as follows:

"... Said tax shall be due and payable upon the filing of such instrument for record..."

In view of the above provisions of law, it is apparent that no mineral documentary tax is due unless and until some instrument or other writing is filed and recorded in the office of the judge of probate. Therefore, it is obvious that the answer to Question No. 1 is in the negative since no instrument or other writing has been or will be filed and recorded.

With respect to Question No. 2 and from the additional facts given by you, no instrument or other writing has been or will be filed and recorded other than what is usually done in the probate of a will. Under such circumstances and based on the language used in the statutes [Title 51, Sections 16(10) - 16(17), Pocket Part, Code of Alabama 1940, Recompiled 1958], it is my opinion that it was not the intention of the Legislature to levy the mineral documentary tax upon the probate of a will. Therefore, Question No. 2 is answered in the negative.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

January 12, 1966

Hon. Ralph P. Eagerton
Chief Examiner
State Department of Examiners
of Public Accounts
Montgomery, Alabama

Filing Tax — Judges of Probate — Taxation — Uniform
Commercial Code.

1. Uniform Commercial Code is adopted in Alabama under
Act No. 549, Regular Session 1965, effective midnight De-
cember 31, 1966.

2. Security Agreements and Financing Statements under the Uniform Commercial Code, even before the effective date, are subject to provisions of Title 51, Section 619, Code of Alabama Recompiled 1958.

3. Financing Statement is a memorandum evidencing a security instrument in the nature of a chattel mortgage filed in another state and is subject to filing tax under Section 619, *supra*.

Opinion by Assistant Attorney General Webb.

Dear Mr. Eagerton:

I have your letter of January 10, 1966, which reads as follows:

"I am enclosing photostats of two forms which have been received from our district supervisor in Dale County. The Probate Judge and Chief Clerk in Dale County inform us that these types of instruments are being received more and more at the present time. They are presently being recorded in a miscellaneous record rather than in the mortgage record and no mortgage tax is being charged on them, only a recording fee. Our district supervisor has presented the following questions:

"1. Should there be a mortgage tax charged on these types of instruments? I am aware of the fact that on one of the instruments the secured party is a national bank and, therefore, exempt; however, I am interested in the type of instrument involved.

"2. If mortgage tax should be charged, what would be the proper procedure to determine the amount of money on which the tax is to be based in the absence of any stated amount in the instrument?

"3. Is it proper to record this instrument in the Miscellaneous Record rather than Mortgage Record?

"I would appreciate your opinion on these questions."

The two forms enclosed by you are entitled, first, a "Financing Statement and Security Agreement" and, the second, a "Financing Statement." I have found that these two forms are in the nature of chattel mortgages under the secured transactions provisions, Sections 9-401 through and including 9-408 of the Uniform Commercial Code (UCC), which is not yet effective in the State of Alabama.

Under the Uniform Commercial Code, the purpose of a financing statement is to record in other states a memorandum of a security agreement (chattel mortgage or conditional sales contract) which has

been executed in the state of origin. In this example, you will note that the financing statement was executed in Georgia and recorded in Alabama. This means, under the terms of the UCC, that the goods listed on the financing statement are mortgaged under a security agreement in the State of Georgia but have been removed to the State of Alabama. The short form memorandum, called a financing statement, is a simplified procedure to take advantage of the filing provisions of Alabama law. (See Section 9-402, UCC, and Code comment thereto, UCC, Uniform Laws Annotated) I express no opinion on the legal effect of such filing at this time.

Act No. 549, Regular Session 1965, which shall become effective at midnight December 31, 1966, adopts the UCC in Alabama and also amends Section 619 of Title 51, Code of Alabama Recompiled 1958, by including these instruments with exception of security interests in accounts, contract rights or general intangibles. Section 10-102(12), Act No. 549, *supra*.

In my opinion, the instruments are now subject to the provisions of Section 619, *supra*, and the obvious purpose of the amendment to this section was to exempt from the filing tax those security interests in accounts, contract rights and general intangibles as well as provide a method of fixing valuation by the State Department of Revenue on petition of the taxpayer. A similar situation regarding the filing of memorandum of instruments has previously been treated in Quarterly Report of Attorney General, Volume 119, page 7, which took up the question of a memorandum of lease filed for record in Alabama. This opinion held, in effect that where a party attempts to take advantage of our filing procedure by filing a memorandum only of the original instrument and not filing the instrument itself, the memorandum must be treated as an instrument for the purposes of taxation; thus, the memorandum for lease, in this particular instance, was treated as a lease agreement for the purposes of taxation under the provisions of Title 51, Section 618, Code of Alabama Recompiled 1958.

I, therefore, answer your first question in the affirmative and, as to your second question, I am of the opinion that the proper procedure to be adopted by the Judge of Probate would be to request from the parties, or by such other evidence as he may find necessary, the value of the mortgage at the time of filing, this, in view of the fact that values are omitted from the forms.

In regard to your third question, I am of the opinion that the instrument should be recorded in the mortgage book the same as any other chattel mortgage.

At your request, I have confined this ruling to the types of instruments and form only. I have not touched upon the fact that the

mortgagee or "secured party" is or might be an exempt person or corporate body such as a national bank.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

January 14, 1966

Honorable Forrest Castleberry
Mayor, Town of Castleberry
Castleberry, Alabama

Licenses — Municipalities — Taxes.

1. A municipality may not impose a license tax upon a gas district organized under Act No. 762, Acts of Alabama 1951, page 1319, as amended by Act No. 694, Acts of Alabama 1965, approved September 1, 1965.

2. Prior to September 1, 1965, a municipality was authorized to impose a license tax upon such gas district.

3. Quarterly Report of Attorney General, Volume 107, page 7, overruled in part.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of December 16, 1965, is as follows:

"On December 1, 1964, the Town of Castleberry levied a privilege license tax on Gas Districts, amounting to two percent of the gross receipts of such business done in the Town of Castleberry during the preceding year, effective January 1, 1965.

"In view of the passage of Act No. 694, Regular Session 1965, of the Alabama legislature, will you please give us your opinion as to whether this privilege license tax is valid? (See Section 3 of said Act No. 694, amending Act No. 762 of 1951, Gas District Act.)

"This town is served by the Conecuh-Monroe Counties Gas District.

"As I understand it, prior to passage of Act No. 694, the State

Supreme Court upheld the validity of a municipal ordinance levying such a license tax (*Town of Hackleburg v. Northwest Alabama Gas District—Special Term, 1964*).

"The Conecuh-Monroe Counties Gas District is refusing to pay our license tax, citing Act No. 694. In other words, it has not paid a license for 1965. (Due January 1, 1965.)"

As your request points out, Act No. 762, Acts of Alabama 1951, page 1319, under which gas districts are organized in this State, was amended by Act No. 694, Acts of Alabama 1965, approved September 1, 1965.

Prior to enactment of Act No. 694, *supra*, the Supreme Court of Alabama held in the case of **Town of Hackleburg v. Northwest Alabama Gas District**, 277 Ala. 355, 170 So. 2d 792, that a municipality was authorized to impose a license tax upon a gas district organized under Act No. 762, *supra*, if such gas district conducted business within such municipality. See also Quarterly Report of Attorney General, Volume 107, page 7.

However, Section 16 of Act No. 762, as amended, *supra*, now reads in part as follows:

"All property and all income of any district incorporated under this act, and any such district itself, shall be exempt from all state, county, municipal and other taxation in the State of Alabama, including, without limitation, privilege and license taxation...."

It is clear that, in the light of the above-quoted portion of said statute, as amended, a municipality is no longer authorized to levy a license tax upon a gas district such as the one to which your request refers. See opinion to Mr. E. L. Smith, Manager, Conecuh-Monroe Counties Gas District, under date of November 16, 1965.

Under the facts stated in your request, the tax mentioned therein was imposed upon the Conecuh-Monroe Counties Gas District on January 1, 1965. Since Act No. 694, *supra*, did not become effective until September 1, 1965, I am of the opinion that the license tax to which your request refers was valid at the time it was levied and should have been paid to the Town of Castleberry by said Gas District. Of course, said town may not levy a similar license tax on the Gas District for years subsequent to September 1, 1965.

The opinion reported in Quarterly Report of Attorney General, Volume 107, page 7, insofar as it conflicts with the conclusion herein reached, is hereby overruled.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

January 17, 1966

Hon. Eugene (Bull) Connor
President

Ala. Public Service Commission
P. O. Box 991
Montgomery, Alabama 36102

Ala. Public Service Commission — Costs — Appeals —
Circuit Courts — Transcripts.

1. In an appeal to the Circuit Courts of Alabama from a final order or action of the Alabama Public Service Commission, the transcript of the proceedings before the Alabama Public Service Commission shall be filed with the courts and taxed as part of the costs of the hearing before said court.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion from this office is as follows:

"Section 101, Title 48, Code of Alabama 1940, as amended, provides in the last sentence thereof that the costs of the transcript certified by the Public Service Commission to the Circuit Court shall be taxed as a part of the costs of the cause at the same rate as transcripts from the circuit court to the Supreme Court are taxed. While this Section appears in Subdivision 4 of Article 2 of Chapter 1 of Title 48 under the heading 'Injunction or Restraining order,' it appears to me that Section 101 is referable to appeals taken under Section 79 of Title 48. This observation is made under authority of the first sentence of Section 101 which states that, 'If upon the appeal of any cause of action originating under this title, etc.', which seems to refer to any appeal taken under Title 48.

"Moreover under Subdivision 4 there is no provision for the certification of a transcript by this Commission. The only such certification is provided under Section 83 of Title 48.

"I would therefore, respectfully request that you give the Commission an official answer to the following inquiry: May the Commission ask the Circuit Court, to which an appeal is taken under Section 79, Title 48, to add to the costs of an appeal from an order of the Commission, the costs of the transcript certified by the Commission to that Court under Section 83 of Title 48?

"In the event your answer to the foregoing question is in the affirmative, we would like an answer also to this inquiry: In

making up its statement of the costs of certifying the record or transcript, is the Commission within its rights in adding the costs of the original transcript of the oral testimony when such original transcript is certified to the Circuit Court in lieu of a copy thereof.

"The certification of the great majority of records in appeal cases is a tremendous expense on the part of the State of Alabama and this Commission and if it is proper to tax these costs along with other Court costs it will be a tremendous savings to the State of Alabama."

Title 48, Section 79, Code of Alabama 1940, as Recompiled 1958, provides that an appeal will lie to the Circuit Court of Montgomery County, Alabama, except appeals under Chapter 3 of Title 48, Code of Alabama 1940, as Recompiled 1958, from any final action or order of the Alabama Public Service Commission.

Title 48, Section 82, Code of Alabama 1940, as Recompiled 1958, provides for the procedure to be followed by the Circuit Court in hearing the appeal.

Title 48, Section 83, Code of Alabama 1940, as Recompiled 1958, provides that the transcript of the proceedings before the Commission shall be certified by the Commission to the Circuit Court within thirty days after an appeal thereto has been taken.

Title 48, Section 101, Code of Alabama 1940, as Recompiled 1958, provides as follows:

"§101. Costs under this title; how taxed and collected.—If upon the appeal of any cause of action originating under this title, it shall be determined by the court that the order of the commission was invalid or unreasonable or unjust and should not be performed, the costs of said suit may, in the discretion of the court be taxed against the state or the utility or utilities involved in the suit. If on the hearing the court should find in favor of the public service commission, then the costs of the suit shall be paid by the utilities by or against which the proceedings were instituted. If costs are ordered taxed against or paid by the state, the same shall be paid upon the approval of the trial judge, by a warrant drawn by the comptroller upon the treasurer. The costs of the transcript certified by the public service commission to the circuit court shall be taxed as a part of the costs of the cause at the same rate as transcripts from the circuit court to the supreme court are taxed."

It will be noted that Section 101, *supra*, provides that upon an appeal from any final order or action of the Commission, the costs of the proceedings in the court shall be taxed according to which side prevails before the court.

Section 101, *supra*, further specifically provides that the transcript compiled by the Commission from proceedings before it and filed by it with the court, shall be taxed by the court against the losing party as a part of the costs of the appeal.

Although Section 101, *supra*, is found under the heading: "Subdivision 4. Injunction or Restraining Order," it applies by its specific wording — " * * * any cause of action originating under this title" — to every appeal taken to the Circuit Courts of Alabama from a final order or action of the Commission.

The major provisions dealing with the procedure to be followed in appealing from a final order or action of the Commission to the Circuit Court of Montgomery County, Alabama and thence to the State Supreme Court are found in Article 2 of Chapter 1 of Title 48, of which Section 101, *supra*, is a part.

Therefore, I am of the opinion that in all appeals to the Circuit Courts of Alabama from final orders or actions of the Alabama Public Service Commission, the transcript of the proceedings compiled before the Alabama Public Service Commission and filed with the court shall be taxed as a part of the costs of the appeal in the Circuit Court.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

January 24, 1966

Honorable Bill Dannelly
Chairman
Court of County Commissioners
Wilcox County Courthouse
Camden, Alabama

Taxation — Ad Valorem Taxes — Plant Exemption.

1. Court of County Commissioners may grant exemption from certain ad valorem taxes for county purposes to plant under Title 51, Section 3, as amended, Code, Recompiled 1958, under facts discussed.

2. To obtain plant exemption from ad valorem taxes for state purposes, as provided by Title 51, Section 6, as amended, Code, Recompiled 1958, it is necessary to

file application therefor with the Department of Revenue as set forth in Section 7, Title 51, Code, Recompiled 1958.

Opinion by Assistant Attorney General Payne.

Dear Sir:

Your request for an official opinion of this office bearing date of December 13, 1965, reads as follows:

"I enclose herewith a copy of application filed with our Court of County Commissioners by Allenton Lumber Co., a Corporation, asking for the remission of and exemption from certain taxes, under the provisions of Section 3, Title 51, Code of Alabama, 1948, Recompiled as amended. This Corporation operates a sawmill, planer mill and chipper, and, of course, is located in Wilcox County, Alabama. Please give us an official opinion as to the following questions:

"1. Does this Corporation come under the provisions of the above stated law and is it entitled to certain tax exemptions?

"2. If so, what particular taxes would be exempt by our Court of County Commissioners?

"3. Does this Corporation also have to make application with the State Department of Revenue?"

In response to my conversation over the telephone to you of January 11, 1966, requesting additional specific information as to the application filed by the Allenton Lumber Company, Inc., for exemption from county taxes as provided by Title 51, Section 3, as amended, Code, Recompiled 1958, you have advised substantially as follows: (a) that the petition was filed in the early part of December, 1965, prior to your letter of December 13, 1965, seeking certain advice of this office; (b) that construction of the plant was begun in the early part of December, 1965, prior or at about the same time that the petition was filed; (c) that the plant had not been completed as of the date of our telephone conversation on January 11, 1966, and (d) that the plant would be completed in a very short time. In view of this statement of fact, it is necessary that a determination be made as to whether or not the petition or application has been timely filed in order to be entitled to claim the exemption involved.

In this connection, it is basic in ad valorem tax law that the liability for ad valorem taxes and the amount of tax due, where otherwise not exempt, is fixed as of October 1 of any given year. Here, according to the facts submitted for consideration, the petition requesting the

exemption was filed with the Court of County Commissioners of Wilcox County sometime around the first day of December, 1965, or shortly thereafter and construction begun on or about the same time. Consequently, as of the aforesaid time no lien had attached to any building structure in connection with the proposed building of the plant in question. Such being the case, assuming the aforementioned facts to be true, I can see no reasonable cause for holding that this application and petition has not been timely filed within the law and the spirit of the statute in question. The situation here is similar to that pointed out in Quarterly Report of the Attorney General, Vol. 64, P. 37. There, the plant was begun and completed during the current tax year (1947) and, according to the opinion, "...application for exemption made on May 31, 1947 — **several months before the October 1 attachment of the tax lien.**" In the case at hand, construction of the plant was begun in the current tax year (1966) and will be completed during said current tax year. Therefore, in my opinion the petition or application of Allenton Lumber Company, Inc., is and has been timely filed.

While it is true, that the copy of the petition to the County Commission requested exemption for a period not exceeding ten years "beginning with October 1, 1965," this would in nowise hinder the Court of County Commissioners from granting the exemption, if it deems advisable, beginning with the tax year 1967 which would become effective October 1, 1966. In accordance with said Section 3, *supra*, at the discretion of the Commission, a ten year exemption could be accorded from the date of completion of the plant—to become effective October 1, 1966 (for the tax year 1967).

Having discussed the above phase of this matter I turn now to the specific questions set out for consideration of this office. Your question numbered 1 desires a ruling as to whether or not the named corporation is entitled to the exemption from certain ad valorem taxes provided under Section 3, as amended, Title 51, Code, Recompiled 1958 (Pocket Part). In the first paragraph of the petition which you attach to your request there is stated in substance that the said mill, among other things, "will process, manufacture, or produce articles for sale or trade and commercial articles, materials or supplies to be used in the building of houses, buildings, other plants and like purposes." Section 3 of the Code, *supra*, is very broad in the subjects covered that would entitle the granting of the exemptions provided. Among the section provisions is the following:

"...; and for the manufacture, production or processing of any trade or commercial articles, materials, or supplies whether or not such articles, materials or supplies are specifically named herein;..."

Assuming that the plant will operate in the manner stated in its petition then I would say, in my opinion, under the above quoted clause of Section 3, *supra*, that the corporation would qualify for the exemption.

Hence, your first question is answered in the affirmative. Cf. Quarterly Report of the Attorney General, Vol. 63, P. 83 (holding veneer mill which operates lathes cutting veneer entitled to exemption).

As to your second question the Court of County Commissioners of Wilcox County would be empowered to exempt and remit taxes assessed for all county purposes **except for any school and school district purposes**. In addition, the Commission is authorized to exempt from ad valorem taxation the **capital stock** of the corporation—the words “capital stock” mean the “shares of stock” of the corporation. Quarterly Report of the Attorney General, Vol. 117, P. 15. Under no circumstances can the land on which is located the plant, factory or industry, be exempted from the payment of ad valorem taxes, by the Commission.

As to your third question, if the corporation desires to obtain exemption from ad valorem taxes for state purposes, then, in such case, it would be necessary to make application with the State Department of Revenue as provided by Section 7, as amended, Title 51, Code, Recompiled 1958 (Pocket Part).

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

February 14, 1966

Hon. Otha Lee Biggs, Clerk
The County Commission
Monroe County
Monroeville, Alabama

Ad Valorem Taxes — Taxation — Exemption — Court of
County Commissioners.

The Court of County Commissioners has the power to extend an exemption granted pursuant to Title 51, Sections 3 - 4, as amended, Code of Alabama 1940, for a period not to exceed an aggregate total of ten years, provided an application of such extension is timely filed and the extension is granted before a tax lien attaches.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion dated February 3, 1966, is as follows:

“Minute Book 8, page 307 of the Minutes of The County Commission of Monroe County recites in part, the Petition of Frisco Manu-

facturing Company, Inc., a domestic corporation, organized on the 30th day of September, 1958 under Alabama law and engaged in the manufacture of furniture for remission of all ad valorem taxes for all County purposes except school purposes as provided by Title 51 Section 4 of the 1940 Alabama Code.

"Pursuant to said Petition, The County Commission remitted all ad valorem taxes for all County purposes except for County schools on factories, etc., of said Frisco Manufacturing Company, Inc., for a period of five years beginning with the tax year 1960 and extending through the tax year 1964. An Officer of this Company maintains that the County Commission sent him a letter stating that the period of exemption was for ten years beginning with the tax year 1960.

"If The County Commission feels that the period of exemption should be for ten years from the tax year 1960, can The County Commission now extend said exemption for a period of five years beginning with the 1965 tax year. If not, are there any tax years included in the ten year period that includes the tax years 1960-69 that The County Commission can legally remit said Corporation's ad valorem taxes under provisions of Title 51 Section 4 of the Code of Alabama 1940.

"Said Corporation has been operating continuously since September 30, 1958. Your attention is respectfully called to Attorney General Opinion dated September 4, 1951, to Hon. Ira Weissinger, Opelika, Alabama, on Page 37 Vol. 64 Attorney General's Opinions."

In an opinion of this office reported in Quarterly Report of the Attorney General, Volume 64, page 42, it was held that the State Department of Revenue, acting by and through the Commissioner of Revenue, has the power to extend an exemption granted pursuant to Title 51, Sections 6 - 9 as amended, Code of Alabama 1940, for a period not to exceed an aggregate total of ten years. Based on the ruling in this opinion and others cited therein, it is my opinion that the Court of County Commissioners of Monroe County has the power to extend an exemption granted pursuant to Title 51, Sections 3-4 as amended, Code of Alabama 1940, for a period not to exceed an aggregate total of ten years provided an application for such extension is timely filed with the Court of County Commissioners and the extension is granted before a tax lien attaches.

Based on the facts stated in your request, the Court of County Commissioners of Monroe County granted to Frisco Manufacturing Company, Inc., an exemption from ad valorem tax pursuant to Sections 3 and 4, supra, for a period of five years beginning with the tax year 1960 (October 1, 1959 - September 30, 1960). This exemption expired September 30, 1964. Apparently, no application for an extension of the

five year exemption period was filed by the corporation with the Court of County Commissioners prior to October 1, 1964, and no extension was granted by the Court prior to October 1, 1964. On October 1, 1964, and on October 1, 1965, a tax lien for ad valorem tax attached for the tax years 1965 and 1966. In view of this fact and of the ruling by this office in Quarterly Report of the Attorney General, Volume 64, page 37, it is my opinion that it is now too late for the Court of County Commissioners to extend the original five year exemption or to give any further exemption to the original plant, industry or factory. In Volume 64, page 37, *supra*, it is stated:

"This is not to say that a taxpayer, who has not applied for an exemption before the attachment of a tax lien for one tax year, may present his application in time for the next tax year. Once a tax lien has attached for any tax year, the application for exemption comes too late."

In your request you state that an officer of the corporation maintains that the Court of County Commissioners sent him a letter stating that the period of exemption was for ten years beginning with the tax year 1960. The period of the exemption beginning with the tax year 1960 is a question of fact and would be governed by the terms of the exemption order.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

February 21, 1966

Honorable Norman K Brown
City Attorney
City of Midfield
Midfield, Alabama

Licenses — Municipalities — Taxes.

A municipality may not, without specific statutory authority, impose a tax upon another municipality or another subdivision of the State which has power to levy taxes.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of January 25, 1966, is as follows:

"The City of Bessemer has a water distribution system which extends over the greater part of that portion of Jefferson County

known as the Bessemer Cut-Off. This water distribution system serves the City of Bessemer, as well as the municipalities of Midfield, Hueytown and others.

"The City of Midfield has provided a license for waterworks companies and other utilities, including the Bessemer Water Service in the amount of 3% of the gross receipts of the business done by the utility in the City of Midfield during the preceding year (Title 37, Section 745, Code 1940, Recompiled 1958). The Bessemer Water Service is owned and operated by the City of Bessemer and sells water to domestic customers in the City of Midfield at a profit. In operating its water system, the City of Bessemer does business as the Bessemer Water Service and the water service is not organized into a separate entity or board.

"Please advise if the City of Midfield may exact such a license from the Bessemer Water Service and also please advise if the City of Bessemer is legally obliged to pay same."

A municipality is authorized to levy license or privilege taxes upon businesses, trades and occupations within its corporate limits and its police jurisdiction under Title 37, Chapter 15, Article 3, Code of Alabama 1940, as amended. Title 37, Section 745, Code of Alabama 1940, as amended by Act No. 613, Acts of Alabama 1949, page 945, prescribes the maximum amount of such license or privilege taxes which a municipality may assess against water companies and certain other public utilities.

The question presented by your request is whether a municipality may impose a tax upon another municipality.

The statutes codified in Article 3, *supra*, which authorize a municipality to impose a tax upon water companies are in general terms and do not contain therein any specific authority to levy a tax on a governmental agency or public corporation operating a water system within the corporate limits or police jurisdiction of such municipality. Therefore, the general terms used in said statutes would not suffice as a grant of authority for a municipality to impose a privilege or license tax upon another municipality or similar subdivision of the State. Cf. Quarterly Report of Attorney General, Volume 77, page 49, Volume 86, page 40 and Volume 107, page 7.

The so-called rule of exemption, stated in the preceding paragraph, is based upon the theory that a municipality or another subdivision of the State must levy a tax to pay a tax. The courts will not ordinarily presume that this was intended by the legislature. **Long v. Roberts & Son**, 234 Ala. 570, 176 So. 213; and **State v. City of Montgomery**, 228 Ala. 93, 151 So. 856.

Premises considered, I am of the opinion that the City of Midfield may not impose upon the City of Bessemer its privilege license tax levied upon water distribution systems operating within its corporate limits.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

February 23, 1966

Hon. Cleo D. Teague
Clerk, Circuit Court
Morgan County
Decatur, Alabama

Clerks of Circuit Courts — Costs and Fees — Garnishments
— Municipalities — Witnesses.

1. No commission is authorized the Clerk of Circuit Court for municipal solicitors' fees remitted to the city or town.
2. No commission is authorized the Clerk of the Circuit Court for witness fees remitted to the county.
3. No commission is authorized the Clerk of the Circuit Court on amounts paid into court under garnishment proceedings.

Opinion by Assistant Attorney General Webb.

Dear Mr. Teague:

I have received your letter of February 2, 1966 in which you request my official opinion as follows:

"I request your Official opinion concerning the foregoing matters:

"1. The Regular Session, 1965, Act No. 403(H-85), authorized a Municipal Solicitors Fee in cases of appeal from Recorder's Court, to be collected by the Circuit Clerk and same remitted to the City and/or Town.

"I would like to know if the Clerk is entitled to 5% commission for collecting and remitting same to the City and/or Town. If the same would not apply as does in the case of collecting monies for State and County. Would you please explain?

"2. In Morgan County the Fine and Forfeiture Fund has merged with the General Fund, however upon conviction in criminal cases and in all Civil cases witness fees are paid by the Clerk. After two years if there are any unclaimed witness fees they are paid over to the County and into a fund designated as 'Unclaimed Witness Fee Fund.' In the event there is a claim within the specified time thereafter the Clerk has nothing else to do with it other than to advise anyone making such a claim of the proper procedure for collecting said fee. I would like to know if the Clerk is entitled to 5% commission for collecting and remitting to the County all unclaimed witness fees.

"3. Title 11, Section 21 allows the Clerk for collection of money on judgments where said judgment has not been paid within thirty days after its rendition, one-half of the percentage allowed the Sheriff for the same services for collecting money. Quite often judgments of the above category are collected by means of garnishment for which the Clerk is entitled to a flat fee for handling, docketing, etc. The money collected is applied to the original case for satisfaction of judgments collected by means of garnishment?

"4. If number three is in the affirmative, or in any event judgments are collected by means of partial payments, is the percentage to be figured on each individual payment or on the total amount of judgment and taken out of a particular payment?

"I will appreciate your consideration of the above as soon as possible."

I answer your first question in the negative. I know of no commission authorized the Clerk of the Circuit Court for municipal solicitors' fees collected by him under the provisions of Act No. 403, Regular Session 1965 (MS), and remitted to the city or town. Title 11, Section 22, Code of Alabama Recompiled 1958, authorizes a commission of five percent for amounts collected and remitted to the State of Alabama. Title 13, Section 198, Code of Alabama Recompiled 1958, 1963 Cumulative Pocket Part), authorizes a commission of five percent for fines and forfeitures remitted to the county. There is no similar provision dealing with the municipality or the fees of solicitors collected for such.

I answer your second question in the negative. Title 13, Section 198, *supra*, provides for a five percent commission on **fines** and forfeitures only and not on witness fees. Quarterly Report of Attorney General, Volume 75, page 59.

I answer your third question in the negative. Title 11, Section 21, Code of Alabama Recompiled 1958, provides for a flat fee of Six Dol-

lars (\$6.00) for filing affidavit in garnishment on judgment, request for statement of assets or other ancillary proceedings. The last sentence of Section 21, supra, referred to by you, provides a percentage commission for the clerk for collecting money on judgments where said judgment has not been paid within thirty days after its rendition. Garnishment proceedings are in the nature of ancillary proceedings and collections made thereon are made pursuant to the order of garnishment and are not made specifically on the order of judgment though they are a means of collecting judgments. Title 11, Section 1, Code of Alabama Recompiled 1958, provides that the law of fees and costs must be held to be penal and no fee must be demanded or received except in cases expressly authorized by law. I am, therefore, of the opinion that there is no commission authorized by law for a Clerk of the Circuit Court on amounts paid into court under garnishment proceedings.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

March 11, 1966

Honorable K. B. Hill
Tax Assessor Tuscaloosa County
Tuscaloosa County Courthouse
Tuscaloosa, Alabama 35401

Taxation — Ad Valorem — Constitutional Law

1. A Corporate Charter granted prior to the effective date of the Constitution of 1875 is a "contract" within the prohibition of the Federal Constitution against the impairment of obligations of contracts and hence, is not subject to alteration or revocation by the state without consent of the corporation.
2. An exemption from taxation in the Charter of such a corporation is a part of the "contract" between the corporation and the state and is inviolate to a like extent as other contract obligations.
3. The Most Worshipful Grand Lodge of Free and Accepted Masons of the State of Alabama and their duly constituted and chartered subordinate lodges are exempt from ad valorem taxes as to their real and personal property; and the exemption extends to property owned by such lodges that are rented and income derived therefrom.

Opinion by Assistant Attorney General Reynolds.

Dear Sir:

Your request for an opinion dated February 9, 1966, is as follows:

"I am advised by Mr. Hale Armistead, of the Grand Lodge of Alabama, that in accordance with Acts of Alabama of 1859-60, Page 458, and amendment to Grand Lodge of Alabama Constitution in 1911, Vol. H, page 579, that all Masonic Lodges, or any of the Upper bodies thereof, are exempt from all ad valorem taxes, even to extent of property owned and rented by them.

"Can you advise if this is current authority for the exemption of such property from Ad Valorem taxes in the State of Alabama. Particularly does this exemption extend to property owned by any and all lodges in the State of Alabama, even though it be rented and an income derived therefrom.

"Your advice will be appreciated."

The Act referred to in your letter is Act No. 317, Acts of 1859-60, page 458, approved December 9, 1859. This Act incorporated the Most Worshipful Grand Lodge of Free and Accepted Masons of Alabama and the subordinate lodges under its jurisdiction, and conferred certain rights, privileges, immunities and a tax exemption within certain limits.

Subsequently, on March 17, 1875, Act No. 52, Acts of 1874-75, page 158, was approved which amended Act No. 317, supra. Act No. 52 provided for the corporate entity of the Grand Lodge and its subordinate lodges, conferred substantially the same rights, privileges and immunities as Act No. 317, but enlarged the scope of the tax exemption. In general, Act No. 52 conferred a tax exempt status on the said lodges as to their property and the income therefrom, including rent, to an extent not to exceed in value \$200,000.00. I will not quote portions of this Act in detail as it was subsequently amended by another Act, portions of which will be specifically quoted later in this opinion.

Act No. 52, supra, was the Act involved in the case of **Ware Lodge No. 435, Ancient Free and Accepted Masons vs. Harper** (1938), 182 So. 59; 236 Ala. 334. This case is the prevailing law in Alabama and is responsive to and authority for my answers to the questions involved in your inquiry.

In this case the lodge owned a three-story building on a lot in Alexander City, Alabama. The third floor was used by the lodge as a lodge hall only and for no commercial purposes. The first, and second floors were rented out for commercial purposes and all rent received therefrom, less overhead, was used for charitable purposes. Further, all of the property, real and personal, owned by the lodge did not exceed in value the sum of \$200,000.00. Also, the local lodge was a duly constituted and chartered subordinate lodge of the Most Worshipful Grand

Lodge of Free and Accepted Masons of the State of Alabama. The suit was brought by the lodge against the Tax Collector for taxes paid under protest.

The Court, in holding for the lodge, stated or quoted from other cases that "The Federal Constitution prohibits any state from passing any law impairing the obligation of contracts. Article I, Section 10, Constitution of the U. S." and that "a corporate charter is a contract within the meaning of the clause of the Federal Constitution which prohibits the impairment of obligation of contracts by the state, and is not subject to alteration or revocation without the consent of the corporation." With further reference to the charter of the lodge, the Court cited Thompson on Corporations, 3rd Ed., Vol. 7, as follows:

"It cannot be revoked or altered by a subsequent statute or even by an amendment to the State Constitution without the assent of the corporation."

Further, in the opinion the Court made this statement:

"Here the Legislature having granted the exemption from taxation in the original charter to the Masonic Lodge, such lodge possessed it, and under a constitution permitting such grant, the lodge possessed a vested right, which cannot be summarily taken away from it by a subsequent Legislature operating under constitutions with different limitations and terms. That is to say, the right of exemption, here the subject of litigation, being vested and of a contractual nature, is protected from impairment by state and Federal constitutions."

The Court further pointed out in citing **State vs. Alabama Bible Society**, 134 Ala. 632, 32 So. 1011, that the Constitution of 1819, under which the Act of 1859 (Act No. 317) was passed allowed the granting of such charters not subject to alteration or revocation; whereas, the subsequent Constitutions of 1868, 1875 and 1901 provided for such alteration or revocation by the Legislature for the public good.

The argument was raised in this case that the exemption granted as to the amount involved was far reaching. As to this the Court said:

"We have only to say that this was a matter for legislative judgment and its effect is that the Grand Lodge and each subordinate lodge under its jurisdiction has the power to acquire any personal or real property not exceeding in value the sum of \$200,000 as the maximum of their assets, respectively, and that this right was granted along with the charter to the Masons, as such, and to each subordinate lodge under their jurisdiction; and that the same may be enforced by them, respectively and the property and assets owned being dedicated to charitable purposes only, shall be exempt from taxation."

In keeping with the statements in the **Ware** case, *supra*, to the effect that no subsequent constitution can revoke or alter a contract previously made, is the case of **City of Bessemer vs. Birmingham Electric Co.**, 40 So. 2d 193, 252 Ala. 171, wherein the Court held that the Constitution of 1901, Section 228, prohibiting cities over 6,000 population from granting street or other rights in excess of thirty years would not have the effect of altering or revoking grants given in excess of thirty years, such grants having been made prior to the effective date of the Constitution.

Subsequent to the **Ware** case, the Legislature amended Act No. 52, *supra*, by Act No. 2, Fourth Special Session of 1950, page 41, approved August 10, 1950. The main change effected by Act No. 2 was the removal of the \$200,000.00 value limitation. This afforded greater tax exemption benefits to the lodges and was obviously assented to and accepted by them, hence, the Act presented no conflict with the **Ware** case which recognized the constitutional prohibition against later Legislatures from changing or altering acts chartering private corporations when those acts were passed under a Constitution (Constitution of 1819) which did not provide for such changing or altering thereof.

Therefore, Act No. 2 (1950), *supra*, is the current statutory authority for the tax exemption for the lodges in question. To provide a fuller understanding of the exemption, pertinent parts of Act No. 2 are quoted as follows:

"Section 1. R. H. Ervin, and their successors in office, are hereby incorporated by the name of the Most Worshipful Grand Lodge of Free and Accepted Masons of the State of Alabama, and may grant dispensations and charters to subordinate Lodges, to be subject to and under its Masonic jurisdiction, may acquire, purchase, hold and enjoy so much real estate as may be necessary for the erection of proper buildings and offices for carrying on and conducting its business, may rent out any store, rooms or offices in the lower stories of the buildings and collect the rent, and may hold or loan out any money derived from the renting of its store rooms and offices subject to the regulations hereinafter prescribed."

"Section 2. That said Grand Lodge shall have power to collect its revenue, and to apply the same according to the ancient customs of the Order, provided the funds in money . . . shall not be loaned upon usurious interest, nor shall the funds or accretions thereof be used otherwise than for the payment of the expenses of said Grand Lodge and for charitable purposes and being thus set apart, the same shall not be liable to taxation."

"Section 5. The said Grand Lodge and each subordinate Lodge under its jurisdiction shall have, respectively, power to receive by

gift, grant,....or otherwise, any personal or real estate.....and the property and effects owned by them, when dedicated to charitable purposes, shall be exempt from taxation.”

Hence, it is my opinion that from all of the above, the said Grand Lodge and its duly constituted subordinate lodges are exempt from ad valorem taxes as to their real and personal property without limitation as to an amount of value; and the exemption extends to property owned by such lodges that are rented and income derived therefrom.

See also Quarterly Reports of the Attorney General, Vol. 12, Page 123; Vol. 13, Page 136.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

March 22, 1966

Honorable Phillip J. Hamm
Commissioner of Revenue
Administrative Building
Montgomery, Alabama

Taxation — Ad Valorem Tax — Use Tax — License Tax.
Soldiers' and Sailors' Civil Relief Act.

Opinions Overruled, Modified, or Distinguished.

With respect to nonresident personnel in the military service stationed in Alabama in compliance with military or naval orders:

1. Motor vehicles of such personnel on which an ad valorem tax lien has not attached are not subject to ad valorem tax in Alabama. Where motor vehicles are subject to a tax lien when purchased by such personnel, the tax must be paid if Alabama license plates are purchased but the motor vehicles are no longer subject to ad valorem tax in Alabama for subsequent tax years so long as they are owned by such military personnel.

2. Motor vehicles and other tangible personal property of such personnel are not subject to Alabama Use Tax.

3. Alabama may require such personnel to register and license their motor vehicles under its laws where they

have not registered their motor vehicles and obtained license plates under the laws of their home state.

4. Opinions reported in Quarterly Report of the Attorney General, Volume 94, page 27, overruled in part, and in Volume 119, page 27, modified.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an opinion, dated March 8, 1966, is as follows:

"On October 27, 1955, an Attorney General's opinion reported in Quarterly Report of the Attorney General, Volume 81, page 16, was rendered wherein it was held that motor vehicles of nonresident personnel stationed in Alabama in compliance with military or naval orders are not subject to ad valorem tax even though Alabama license tags for such vehicles are purchased.

"On January 26, 1959, An Attorney General's opinion reported in Quarterly Report of the Attorney General, Volume 94, page 27, was rendered wherein it was held that Alabama use tax is not due with respect to motor vehicles purchased outside the State for use in Alabama by nonresident personnel of the military service stationed in Alabama in compliance with military or naval orders where the excise (sales or use) tax imposed by the state of domicile of such personnel was paid. This opinion also held that Alabama use tax is not due with respect to tangible personal property, other than motor vehicles, purchased outside the State for use in Alabama by such nonresident service personnel.

"On January 18, 1966, the Supreme Court of the United States released its decision in the cases of **California v. Buzard** and **Snapp v. Neal**.

"In view of these recent US Supreme Court opinions, it is requested that you advise me as to the liability of non-resident personnel of the military service stationed in Alabama in compliance with military or naval orders for ad valorem tax, use tax, and motor vehicle license tax with respect to motor vehicles and other tangible personal property owned by such personnel and not used in or arising from a trade or business."

In order to advise you, it is necessary to consider the provisions of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (Title 50, Section 574 USCA) which provides in pertinent part as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State... such

person shall not be deemed to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other state, . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such persons by any State, . . . of which such person is not a resident or in which he is not domiciled, . . . personal property shall not be deemed to be located or present in or to have situs for taxation in such State, Territory, possession, or political subdivision, or district . . .

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof; Provided, That the license, fee, or excise required by the State, . . . of which the person is a resident or in which he is domiciled has been paid."

Section 514, supra, was considered by the United States Supreme Court in the case of **Dameron v. Brodhead**, 345 U. S. 322, 73 S. Ct. 721, 32 ALR 2d 612, and in the **Buzard** and **Snapp** cases referred to in your request decided January 18, 1966.

In **Dameron v. Brodhead**, supra, the Court held that the above statute which provides that personal property of nonresident personnel of the military service shall not be deemed to have a situs for taxation in a state in which they may be required to be present by virtue of their service prevents such state from imposing a property tax on such personnel's personal property within the state irrespective of whether or not the state of his domicile has imposed a like tax. In Quarterly Report of the Attorney General, Volume 81, page 16, this office, in view of Section 514(1), supra, and using the **Dameron** case as authority, held that motor vehicles of nonresident personnel stationed in Alabama in compliance with military or naval orders are not subject to ad valorem tax even though Alabama license tags for such vehicles are purchased. In the **Buzard** case the court stated:

"The very purpose of §514 in broadly freeing the non-resident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders. The statute operates whether or not the home State imposes or assesses such taxes against him. As we said in **Dameron v. Brodhead**, 345 U. S. 322, 326, '... though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military

orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right.' Motor vehicles were included as personal property covered by the statute."

In the **Snapp** case, the court reversed the Mississippi Supreme Court and held that Mississippi could not impose an ad valorem tax on a house trailer owned by a nonresident serviceman stationed in Mississippi under military orders.

Therefore, it is my opinion that the conclusion reached in Quarterly Report of the Attorney General, Volume 81, page 16, is correct and is hereby reaffirmed. However, there is one question which has not been specifically raised or answered in any of the opinions cited above. If such military personnel purchase motor vehicles in Alabama on which an ad valorem tax lien has already attached, must the tax due be paid if Alabama license plates for such motor vehicles are purchased by such personnel? In my opinion this question must be answered in the affirmative.

Ad valorem tax on motor vehicles is payable for the preceding tax year when license plates are purchased and a lien for such tax attaches on October 1 of each year. Title 51, Section 704, as amended, and Section 884, Code of Alabama 1940. With respect to motor vehicles brought into the State during any tax year or new motor vehicles for which licenses have never been issued sold from the stock of a dealer during any tax year, the tax is assessed on a quarterly declining basis as specified in Section 704, as amended, *supra*, depending on when the motor vehicles are brought into the State or when new motor vehicles are sold from the stock of a dealer. A license plate cannot be issued until the ad valorem tax, if any is due, is paid. Section 704, *supra*. Once a tax lien attaches, such lien remains as a cloud upon such property until removed by payment of the tax. Such was the holding in the case of **United States v. State of Alabama**, 313 U. S. 274, 61 S. Ct. 1011, wherein the Federal Government purchased land in Alabama on October 1, 1936, the "tax or law day." The United States Supreme Court stated:

"The United States took the conveyances with the knowledge of the state law fixing the lien as of October 1st.

"We make no exception of the tract conveyed to the United States on the tax day, October 1, 1936, as we think the State statute, as contended by the State, is to be deemed effective from the moment the tax day began. See *Beck v. Johnson*, 235 Ala. 323, 324, 179 So. 225."

It is true that the Court held that the lien could not be enforced by levy on and sale of the property so long as it was owned by the Federal Government. The basis for this conclusion was that such action would

be a proceeding against the United States without its consent contrary to the Constitution of the United States. In my opinion, such immunity under similar circumstances is not extended to nonresident military personnel under Section 514, *supra*.

No tax lien will ever attach to motor vehicles brought into Alabama by such military personnel so long as the motor vehicles are owned by them. Section 514, *supra*. If the motor vehicles purchased by such military personnel from an Alabama dealer are new, they are not subject to a tax lien at the time of purchase [Title 51, Section 704(e), as amended, Code of Alabama 1940] and no lien will ever attach to such motor vehicles so long as they are owned by such military personnel even though they purchase Alabama license plates. Section 514, *supra*. However, in most instances, where used motor vehicles are purchased, a tax lien has attached; this is a question of fact to be determined in each case. See Quarterly Report of the Attorney General, Volume 104, page 41, wherein it was held that where an ad valorem tax lien has attached on a used automobile, such lien remains and continues on such automobile until satisfied by payment of the tax due even though such automobile passes through a dealer's inventory during the tax year.

Therefore, where such nonresident military personnel purchase motor vehicles in Alabama on which an ad valorem tax lien has attached, it is my opinion that the tax due must be paid if such personnel elect to purchase Alabama motor vehicle license plates but such motor vehicles would no longer be subject to ad valorem tax in Alabama for subsequent tax years so long as they are owned by such military personnel.

With respect to tangible personal property of such military personnel other than motor vehicles, the **Dameron** case, *supra*, clearly holds that such property is not subject to Alabama ad valorem tax. I cannot conceive of any situation where any question as to liability would ever arise where an ad valorem tax lien, if any, has already attached to such property when purchased in Alabama by such military personnel.

The Alabama use tax is an excise tax imposed on the storage, use or other consumption of tangible personal property purchased at retail for storage, use or other consumption in Alabama at the rate of four percent of the sales price of such property. Title 51, Section 788, as amended, Code of Alabama 1940. In Quarterly Report of the Attorney General, Volume 94, page 27, it is stated:

"Under Section 574(1), *supra*, the situs of personal property (which includes motor vehicles) of non-resident service personnel is not in the State of Alabama and but for the proviso in Section 574(2), *supra*, no license, fee or excise, imposed by the State of Alabama with respect to motor vehicles or the use thereof is due. However, under the proviso where the license, fee, or excise required by the State, Territory, possession or District of Columbia, of which

the person stationed in Alabama is a resident or in which he is domiciled has not been paid, the license, fee, or excise imposed by the State of Alabama is due. The Alabama use tax is an excise tax. Title 51, Section 788, as amended, Code of Alabama 1940.

"Therefore, in answer to your first question, it is my opinion that the State of Alabama may not collect a use tax with respect to motor vehicles purchased outside the State for use in Alabama by non-resident personnel of the military service stationed in Alabama solely by reason of military or naval orders where the excise (sales or use) tax imposed by the state of domicile of such personnel has been paid. If not paid to the state of domicile, the Alabama use tax is due. Section 574(2), *supra*. If no such tax is imposed by the state of domicile, no use tax is due the State of Alabama. **Dameron v. Brodhead**, *supra*.

"With respect to question number 2, the personal property of non-resident service personnel stationed in Alabama in compliance with military or naval orders 'shall not be deemed to be located or present in or to have a situs for taxation' in Alabama. Section 574(1), *supra*. As pointed out above, only motor vehicles are excepted. Section 574(2), *supra*. Therefore, it is my opinion that Alabama use tax is not due with respect to tangible personal property other than motor vehicles purchased outside of Alabama for use in Alabama by non-resident service personnel stationed in Alabama in compliance with military or naval orders."

Insofar as it relates to use tax with respect to motor vehicles, it appears that the above opinion in Volume 94 of the Attorney General's Reports is not in conformity with the decision in the **Buzard** case. The facts in that case are stated as follows:

"The respondent here, Captain Lyman E. Buzard, was a resident and domiciliary of the State of Washington stationed at Castle Air Force Base in California. He had purchased an Oldsmobile while on temporary duty in Alabama, and had obtained Alabama license plates for it by registering it there. On his return, California refused to allow him to drive the car on California highways with the Alabama plates, and, since he had not registered or obtained license tags in his home State, demanded that he register and obtain license plates in California. When he sought to do so, it was insisted that he pay both the registration fee of \$8 imposed by California's Vehicle Code and the considerably larger 'license fee' imposed by its Revenue and Taxation code. The license fee is calculated at 'two(2) percent of the market value of the vehicle,' §10752, and is 'imposed...in lieu of all taxes according to value levied for State or local purposes on vehicles...subject to registration under the Vehicle Code...' §10758. Captain Buzard refused to pay the 2% fee, and was prosecuted and convicted for violating Vehicle Code §4000, which provides that '[N]o person shall drive...any motor

vehicle...upon a highway unless it is registered and the appropriate fees have been paid under this Code.' The conviction, affirmed by the District Court of Appeal, 38 Cal. Rptr. 63, was reversed by the Supreme Court of California, 61 Cal. 2d 833, 395 P. 2d 953, 40 Cal. Rptr. 681. We granted certiorari, 380 U.S. 931, to consider whether §514 barred California from exacting the 2% tax as a condition of registering and licensing Captain Buzard's car. We conclude that it did, and affirm."

In holding that California could not require the payment of the 2% "license fee," the United States Supreme Court stated:

"To assure that servicemen comply with the registration and licensing laws of some State, whether of their home State or the host State, we construe the phrase 'license, fee, or excise **required by the State...**' as equivalent to 'license, fee, or excise **of the State...**' Thus read, the phrase merely indicates Congress' recognition that, in one form or another, all States have laws governing the registration and licensing of motor vehicles, and that such laws impose certain taxes as conditions thereof. **The serviceman who has not registered his car and obtained license plates under the laws 'of' his home State, whatever the reason, may be required by the host State to register and license the car under its laws.**

"The proviso is to be read, at the least, as assuring that §514 would not have the effect of permitting servicemen to escape the obligation of registering and licensing their motor vehicles. It has been argued that §514(2)(b) also represents a congressional judgment that servicemen should contribute to the costs of highway maintenance, whether at home or where they are stationed, by paying whatever taxes the State of registration may levy for that purpose. We conclude, however, that no such purpose is revealed in the section or its legislative history and that its intent is limited to the purpose of assuring registration. Since at least the 2% tax here involved has been held not essential to that purpose as a matter of state law, we affirm the California Supreme Court's judgment....

"Although the Revenue and Taxation Code expressly denominates the tax 'a license fee,' §10751, there is no persuasive evidence Congress meant state labels to be conclusive; therefore, we must decide as a matter of federal law what 'licenses, fees or excises' means in the statute. See *Storaasli v. Minnesota*, 283 U.S.57, 62. **There is nothing in the legislative history to show that Congress intended a tax not essential to assure registration, such as the California 'license fee,' to fall within the category of 'licenses, fees or excises' host States might impose if home State registration was not effected...**

"Taxes like the California 2% 'license fee' serve primarily a revenue interest, narrower in purpose but no different in kind from taxes

raised to defray the general expenses of government. It is from the burden of taxes serving such ends that nonresident servicemen were to be freed, in the main, without regard to whether their home States imposed or sought to collect such taxes from them. **Dameron v. Brodhead**, *supra*... we conclude that subsection (2)(b) refers only to those taxes which are essential to the functioning of the host State's licensing and registration laws in their application to the motor vehicles of non-resident servicemen...

"Whatever may be the case under the registration and licensing statutes of other States California authorities have made it clear that the California 2% tax is not imposed as a tax essential to the registration and licensing of the serviceman's motor vehicle." (Emphasis supplied)

The Alabama use tax is not imposed as a tax essential to and, in fact, has nothing to do with the registration and licensing of motor vehicles.

In view of the above, it is my opinion that Alabama use tax is not due with respect to tangible personal property, including motor vehicles, purchased outside of Alabama for use in Alabama by non-resident personnel of the military service stationed in Alabama in compliance with military or naval orders. So much of the opinion in Quarterly Report of the Attorney General, Volume 94, page 27, relating to use tax with respect to motor vehicles and in conflict with this opinion is overruled.

Your question with respect to motor vehicle license tax is succinctly answered in the **Buzard** case wherein it is stated:

"The serviceman who has not registered his car and obtained license plates under the laws 'of' his home state, whatever the reason, may be required by the host state to register and license the car under its laws."

See Quarterly Report of Attorney General, Volume 119, page 27, wherein it was held that a house trailer is a motor vehicle and when owned by a nonresident serviceman stationed in Alabama under military or naval orders would not be subject to the license levied on house trailers in this State under Act No. 44, Special Session 1961, as amended by Act No. 159, Special Session 1962, if such serviceman has licensed the house trailer for the current year as required by the state, territory, possession or district of which he is a resident. The use of the words "required by the state" in said opinion is modified to conform with the construction thereof in the **Buzard** case that such words are equivalent to "of the state."

The liability of nonresident personnel in the military service stationed in Alabama in compliance with military or naval orders for the taxes specified in your request is summarized as follows:

1. Motor vehicles of such personnel on which an ad valorem tax lien has not attached are not subject to ad valorem tax in Alabama. **Dameron v. Brodhead; Snapp**; and Quarterly Report of the Attorney General, Volume 81, page 16, supra. Where motor vehicles are subject to an ad valorem tax lien when purchased in Alabama, the tax must be paid if such personnel elect to purchase Alabama motor vehicle license plates but such motor vehicles are no longer subject to ad valorem tax in Alabama for subsequent tax years so long as they are owned by such military personnel. **United States v. Alabama**, supra.

2. Motor vehicles and other tangible personal property of such personnel are not subject to Alabama use tax. **Buzard**; Quarterly Report of the Attorney General, Volume 94, page 27, supra.

3. Alabama may require such personnel to register and license their motor vehicles under its laws where they have not registered their motor vehicles and obtained license plates under the laws of their home state. **Buzard; Snapp**, supra.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

March 29, 1966

Honorable Glenn H. Hearn
Mayor, City of Huntsville
Huntsville, Alabama

Municipalities — Officers and Offices — Opinions Overruled,
Modified or Distinguished.

1. The Mayor of the City of Huntsville is authorized to appoint all officers and department heads of said City who hold appointive offices, such appointments being subject to the approval of the City Council.

2. The Council of the City of Huntsville is authorized to prescribe by ordinance or resolution the method of employing other personnel.

3. Quarterly Report of Attorney General, Volume 117, page 12, overruled.

Opinion by Assistant Attorney General Gish.

Dear Mr. Hearn:

Your request for an opinion, dated March 7, 1966, is as follows:

"I respectfully request your opinion concerning the proper interpretation of Act No. 222, H. 107, approved on the 27th day of April, 1965.

Said Act amends Act No. 371, H. 788, approved August 30, 1963.

"Specifically, said act provides 'The mayor shall have the power to appoint all officers and department heads who hold appointive offices, including the officers referred to in Title 37, Section 405, but such appointments shall be effective only if they are approved by a majority affirmative vote of the Council.'

"The above quoted section obviously gives the Mayor, in cities and towns having a population of not less than 70,000 nor more than 120,000, the power to appoint all officers designated as such under the State Law and also all department heads as provided for by ordinances. I would like an official interpretation from your office concerning the following:

"Does the above referenced section give the Mayor power to appoint all employees of the City who hold appointive offices?"

As your request points out Act No. 371, Acts of Alabama 1963, page 870, was amended by Act No. 222, Acts of Alabama, First Special Session, 1965, page 302.

Prior to the enactment of Act No. 222, supra, this office held that the Council of the City of Huntsville was authorized to designate by ordinance the officers and department heads of the City and provide that their appointments be made by the Council. Quarterly Report of Attorney General, Volume 117, page 12.

Section 3 of Act No. 371, as amended, supra, now reads in part as follows:

"The Mayor shall be the chief executive officer, and shall have general supervision and control of all other officers and affairs of the City, except as herein otherwise provided. The Mayor shall appoint all officers and department heads who hold appointee offices, including the officers referred to or provided for in Code of Alabama, Title 37, Section 405, but such appointments shall be effective only if they are approved by a majority affirmative vote of all members of the Council..."

You will note that the above-quoted portion of said statute provides the method of appointing municipal officers and department heads. The word "employee" is not used.

Title 37, Section 429, Code of Alabama 1940, as amended by Section 4 of Act No. 666, Acts of Alabama 1961, page 910, which is applicable to the City of Huntsville, is sufficiently broad to authorize the City Council to fix the method of employing all personnel whose appointment is not controlled by another statute.

Therefore, I am of the opinion that you, as Mayor of the City of Huntsville, are authorized to appoint, subject to the approval of the City Council, all officers and department heads of the said City who hold appointive offices. I am further of the opinion that the Council of the City of Huntsville is authorized to prescribe by ordinance or resolution the method of hiring other City employees.

Due to the general nature of the question presented by your request, I express no opinion as to whether any particular municipal position is filled by an officer or by an employee.

Since Act No. 371, *supra*, was amended after the issuance of the opinion reported in Quarterly Report of Attorney General, Volume 117, page 12, *supra*, said opinion is hereby overruled.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

March 30, 1966

Honorable Robert K. Bell
County Attorney, Madison County
200 Terry-Hutchens Building
Huntsville, Alabama 35801

Counties — Water and Waterways — Corporations

Under the provisions of Title 12, Section 12(22), Code of Alabama 1940, Recompiled 1958 (1963 Cumulative Pocket Part), a county is authorized to make an appropriation to a water conservation corporation created pursuant to Title 12, Chapter 23 (Sections 280-297), Code of Alabama 1940, Recompiled 1958, for the developing and promoting of the water and other resources within the county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of March 23, 1966 is as follows:

"Title 12 of the Code of Alabama 1940 provides for the formation by a county governing body of certain non-profit water conservation corporations whose purpose is to conserve or supply water to the

areas within the county pursuant to the powers granted said corporations by the Alabama Code. The Board of County Commissioners of Madison County wants to grant County funds to one of these nonprofit cooperative water systems within the County for the development and improvement of its water facilities.

"I am writing you on behalf of the Madison County Board of Commissioners to request from you an official opinion as to whether or not the Board of Commissioners has the authority to make such a grant of County funds."

I assume that the nonprofit cooperative water systems in question are water conservation corporations created pursuant to Title 12, Chapter 23 (Sections 280 - 297), Code of Alabama 1940, Recompiled 1958. Based on this assumption, it is my opinion that your inquiry should be answered in the affirmative.

Title 12, Section 12(22), Code of Alabama 1940, Recompiled 1958 (1963 Cumulative Pocket Part), provides as follows:

"§12. **Authority of court.**—The court has authority:

* * * *

"22. To set aside, appropriate and use county funds or revenues for the purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories, and other industries in their respective counties. The court is authorized to enter into contracts with any person, firm, corporation or association to carry out the purposes set forth in this subdivision."

An appropriation by a county to a water conservation corporation, such as the ones in question, in my opinion, comes within the purview of the above quoted Code section, as amended, as the same relates to the developing and promoting of the water and other resources within the county; and may be made to such corporation under the last sentence of said Code section.

This conclusion is analogous to that reached in an opinion of this office reported in Quarterly Report of Attorney General, Volume 115, page 106, which held that a county may legally appropriate monies from the county general fund to a water shed conservancy district for the purpose of acquiring lands or easements for the construction of flood-water retarding structures. Cf. Quarterly Report of Attorney General, Volume 93, page 33; and Letter to Mr. Julian Brown, Executive Secretary, State Soil Conservation Committee, dated May 8, 1959.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

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